

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN SENATE JUNE 8, 2009

AMENDED IN ASSEMBLY MAY 11, 2009

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 1, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 906**

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**Introduced by Assembly Members Hill and Smyth**

February 26, 2009

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An act to amend Section 1091 of the Government Code, relating to conflict of interest, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 906, as amended, Hill. Conflict of interest: remote interest in a contract.

Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law defines what is a remote interest in a contract that does not present a prohibited conflict of interest under these provisions.

This bill would revise the definition of "remote interest" to include the interest of a person who is both a member of a state, county, district, judicial district, or city body or board, and an officer or employee of

an investor-owned utility in a contract related to energy efficiency encouragement programs, under specified conditions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1091 of the Government Code is amended  
2 to read:

3 1091. (a) An officer shall not be deemed to be interested in a  
4 contract entered into by a body or board of which the officer is a  
5 member within the meaning of this article if the officer has only  
6 a remote interest in the contract and if the fact of that interest is  
7 disclosed to the body or board of which the officer is a member  
8 and noted in its official records, and thereafter the body or board  
9 authorizes, approves, or ratifies the contract in good faith by a vote  
10 of its membership sufficient for the purpose without counting the  
11 vote or votes of the officer or member with the remote interest.

12 (b) As used in this article, “remote interest” means any of the  
13 following:

14 (1) That of an officer or employee of a nonprofit entity exempt  
15 from taxation pursuant to Section 501(c)(3) of the Internal Revenue  
16 Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except  
17 as provided in paragraph (8) of subdivision (a) of Section 1091.5.

18 (2) That of an employee or agent of the contracting party, if the  
19 contracting party has 10 or more other employees and if the officer  
20 was an employee or agent of that contracting party for at least three  
21 years prior to the officer initially accepting his or her office and  
22 the officer owns less than 3 percent of the shares of stock of the  
23 contracting party; and the employee or agent is not an officer or  
24 director of the contracting party and did not directly participate in  
25 formulating the bid of the contracting party.

26 For purposes of this paragraph, time of employment with the  
27 contracting party by the officer shall be counted in computing the  
28 three-year period specified in this paragraph even though the  
29 contracting party has been converted from one form of business  
30 organization to a different form of business organization within  
31 three years of the initial taking of office by the officer. Time of

1 employment in that case shall be counted only if, after the transfer  
2 or change in organization, the real or ultimate ownership of the  
3 contracting party is the same or substantially similar to that which  
4 existed before the transfer or change in organization. For purposes  
5 of this paragraph, stockholders, bondholders, partners, or other  
6 persons holding an interest in the contracting party are regarded  
7 as having the “real or ultimate ownership” of the contracting party.

8 (3) That of an employee or agent of the contracting party, if all  
9 of the following conditions are met:

10 (A) The agency of which the person is an officer is a local public  
11 agency located in a county with a population of less than 4,000,000.

12 (B) The contract is competitively bid and is not for personal  
13 services.

14 (C) The employee or agent is not in a primary management  
15 capacity with the contracting party, is not an officer or director of  
16 the contracting party, and holds no ownership interest in the  
17 contracting party.

18 (D) The contracting party has 10 or more other employees.

19 (E) The employee or agent did not directly participate in  
20 formulating the bid of the contracting party.

21 (F) The contracting party is the lowest responsible bidder.

22 (4) That of a parent in the earnings of his or her minor child for  
23 personal services.

24 (5) That of a landlord or tenant of the contracting party.

25 (6) That of an attorney of the contracting party or that of an  
26 owner, officer, employee, or agent of a firm that renders, or has  
27 rendered, service to the contracting party in the capacity of  
28 stockbroker, insurance agent, insurance broker, real estate agent,  
29 or real estate broker, if these individuals have not received and  
30 will not receive remuneration, consideration, or a commission as  
31 a result of the contract and if these individuals have an ownership  
32 interest of 10 percent or more in the law practice or firm, stock  
33 brokerage firm, insurance firm, or real estate firm.

34 (7) That of a member of a nonprofit corporation formed under  
35 the Food and Agricultural Code or a nonprofit corporation formed  
36 under the Corporations Code for the sole purpose of engaging in  
37 the merchandising of agricultural products or the supplying of  
38 water.

39 (8) That of a supplier of goods or services when those goods or  
40 services have been supplied to the contracting party by the officer

1 for at least five years prior to his or her election or appointment  
2 to office.

3 (9) That of a person subject to the provisions of Section 1090  
4 in any contract or agreement entered into pursuant to the provisions  
5 of the California Land Conservation Act of 1965.

6 (10) Except as provided in subdivision (b) of Section 1091.5,  
7 that of a director of, or a person having an ownership interest of,  
8 10 percent or more in a bank, bank holding company, or savings  
9 and loan association with which a party to the contract has a  
10 relationship of borrower or depositor, debtor or creditor.

11 (11) That of an engineer, geologist, or architect employed by a  
12 consulting engineering or architectural firm. This paragraph applies  
13 only to an employee of a consulting firm who does not serve in a  
14 primary management capacity, and does not apply to an officer or  
15 director of a consulting firm.

16 (12) That of an elected officer otherwise subject to Section 1090,  
17 in any housing assistance payment contract entered into pursuant  
18 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.  
19 Sec. 1437f) as amended, provided that the housing assistance  
20 payment contract was in existence before Section 1090 became  
21 applicable to the officer and will be renewed or extended only as  
22 to the existing tenant, or, in a jurisdiction in which the rental  
23 vacancy rate is less than 5 percent, as to new tenants in a unit  
24 previously under a Section 8 contract. This section applies to any  
25 person who became a public official on or after November 1, 1986.

26 (13) That of a person receiving salary, per diem, or  
27 reimbursement for expenses from a government entity.

28 (14) That of a person owning less than 3 percent of the shares  
29 of a contracting party that is a for-profit corporation, provided that  
30 the ownership of the shares derived from the person's employment  
31 with that corporation.

32 (15) That of a party to litigation involving the body or board of  
33 which the officer is a member in connection with an agreement in  
34 which all of the following apply:

35 (A) The agreement is entered into as part of a settlement of  
36 litigation in which the body or board is represented by legal  
37 counsel.

38 (B) After a review of the merits of the agreement and other  
39 relevant facts and circumstances, a court of competent jurisdiction  
40 finds that the agreement serves the public interest.

1 (C) The interested member has recused himself or herself from  
2 all participation, direct or indirect, in the making of the agreement  
3 on behalf of the body or board.

4 (16) That of a person who is an officer or employee of an  
5 investor-owned utility that is regulated by the Public Utilities  
6 Commission with respect to a contract between the investor-owned  
7 utility and a state, county, district, judicial district, or city body or  
8 board of which the person is a member, if the contract requires the  
9 investor-owned utility to provide energy efficiency rebates or other  
10 type of program to encourage energy efficiency that benefits the  
11 public when all of the following apply:

12 (A) The contract is funded by utility consumers pursuant to  
13 regulations of the Public Utilities Commission.

14 ~~(B) The contract is not performed for the profit of the~~  
15 ~~investor-owned utility and~~ provides no individual benefit to the  
16 person that is not also provided to the public.

17 (C) The person has recused himself or herself from all  
18 participation in making the contract on behalf of the state, county,  
19 district, judicial district, or city body or board of which he or she  
20 is a member.

21 (D) The contract implements a program authorized by the Public  
22 Utilities Commission.

23 (c) This section is not applicable to any officer interested in a  
24 contract who influences or attempts to influence another member  
25 of the body or board of which he or she is a member to enter into  
26 the contract.

27 (d) The willful failure of an officer to disclose the fact of his or  
28 her interest in a contract pursuant to this section is punishable as  
29 provided in Section 1097. That violation does not void the contract  
30 unless the contracting party had knowledge of the fact of the remote  
31 interest of the officer at the time the contract was executed.

32 SEC. 2. This act is an urgency statute necessary for the  
33 immediate preservation of the public peace, health, or safety within  
34 the meaning of Article IV of the Constitution and shall go into  
35 immediate effect. The facts constituting the necessity are:

36 To allow the state, a county, district, judicial district, or city to  
37 gain the economic benefits of participating in sponsored energy

- 1 conservation programs as soon as possible, it is necessary for this
- 2 act to go into immediate effect.

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